

16A C.J.S. Constitutional Law § 792

Corpus Juris Secundum | February 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

C. Personal Liberty

3. Right to Travel

a. In General

§ 792. Military personnel

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, Constitutional Law  1186

The First Amendment protects members of the armed services.

Members of the armed services are entitled to the protections of the First Amendment of the Federal Constitution.¹ The different character of the military community and of the military mission requires a different application of these protections,² however, and to strike a proper balance between legitimate military needs and individual liberties, the court considering a First Amendment challenge to military regulations must inquire whether the conditions peculiar to military life dictate affording different treatment to activity arising in a military context.³

The doctrine of First Amendment overbreadth, asserted in support of challenges to the imprecise language of a statute, are not exempt from the operation of the principles that military necessity may render permissible within the military that which may be constitutionally impermissible outside it.⁴ Furthermore, the rule that in the First Amendment context one may attack an overly broad statute without demonstrating that his or her own conduct

could not be regulated by the statute with the requisite narrow specificity is accorded much less weight in the military context.⁵

There is a wide range of conduct of military personnel to which general military regulations may be applied without infringement of the First Amendment,⁶ and the review of military regulations challenged on First Amendment grounds is far more deferential than the constitutional review of similar laws or regulations designed for civilian society.⁷ Even if there are marginal applications in which First Amendment rights may be infringed by such regulations, the possibility that conduct which may ultimately be found to be protected by the First Amendment may be included within their prohibition is not sufficient to invalidate them.⁸ In a combat-zone situation, a military officer must be afforded substantial latitude in balancing competing military needs and First Amendment rights, which determination should not be upset unless the infringement on First Amendment rights is manifestly unrelated to legitimate military interests.⁹

CUMULATIVE SUPPLEMENT

Cases:

The fact that an image depicts another artist's work does not necessarily remove it from the realm of pure speech. U.S.C.A. Const.Amend. 1. Cressman v. Thompson, 798 F.3d 938 (10th Cir. 2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 U.S.—Brown v. Glines, 444 U.S. 348, 100 S. Ct. 594, 62 L. Ed. 2d 540 (1980); Yahr v. Resor, 431 F.2d 690 (4th Cir. 1970); Stein v. Dowling, 867 F. Supp. 2d 1087 (S.D. Cal. 2012); benShalom v. Secretary of Army, 489 F. Supp. 964 (E.D. Wis. 1980).
- 2 U.S.—Brown v. Glines, 444 U.S. 348, 100 S. Ct. 594, 62 L. Ed. 2d 540 (1980).
Limitations on First Amendment
As an officer in the military, an applicant for admission to an army reserve officers' training corps program would be required to accept certain limitations on First Amendment rights that he would enjoy if he were only a civilian.
U.S.—Blameuser v. Andrews, 630 F.2d 538 (7th Cir. 1980).
- 3 U.S.—Carlson v. Schlesinger, 511 F.2d 1327 (D.C. Cir. 1975).
- 4 U.S.—Parker v. Levy, 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).
As to the overbreadth doctrine, generally, see § 748.
- 5 U.S.—Parker v. Levy, 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).
- 6 U.S.—Parker v. Levy, 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).
- 7 U.S.—Goldman v. Weinberger, 475 U.S. 503, 106 S. Ct. 1310, 89 L. Ed. 2d 478 (1986).
Judicial deference at its apogee
U.S.—Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 547 U.S. 47, 126 S. Ct. 1297, 164 L. Ed. 2d 156, 206 Ed. Law Rep. 819 (2006).
- 8 U.S.—Parker v. Levy, 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).
- 9 U.S.—Carlson v. Schlesinger, 511 F.2d 1327 (D.C. Cir. 1975).